

Environmental Law and Justice Clinic

May 27, 2016

Ivry Johnson
Regional Freedom of Information Officer
US EPA, Region 9
(OPPA-2)
75 Hawthorne Street
San Francisco, CA 94105

Re: Freedom of Information Act Request—Los Medanos Energy Center

Dear Ms. Johnson:

The Environmental Law and Justice Clinic (ELJC) at Golden Gate University School of Law is a public interest legal clinic that provides legal services and education on environmental justice issues to San Francisco Bay Area residents, community groups and public interest organizations. Californians for Renewable Energy (CARE) is an organization dedicated to protecting the public from the health impacts of pollution and other environmental hazards and to improving environmental quality for the public benefit.

Under the Freedom of Information Act (FOIA), 5 U.S.C. § 552(a)(3), and the Environmental Protection Agency (EPA) FOIA regulations, set forth at 40 C.F.R. Pt. 2, ELJC on behalf of CARE requests that the agency make available the following records relating to the Los Medanos Energy Center (formerly known as Pittsburg District Energy Facility) located in Pittsburg, California.

The requested documents relate to the facility's compliance with the Clean Air Act (CAA), under which it is classified as an Operating Major Facility (CABAA00006013B1866), and the Resource Conservation and Recovery Act (RCRA), under which it is currently classified as an active Large Quantity Generator (CAR000056044). Specifically, we request the following information, as well as a fee waiver for this request:¹

Los Medanos Energy Center's Compliance with the Clean Air Act

1. All Notices of Violations (NOVs) issued by EPA to Los Medanos Energy Center since 2000.
2. All documents that list episodes in which there was alleged non-compliance from Los Medanos Energy Center, but for which the facility did not receive a NOV.
3. All Inspection Reports documenting inspections of Los Medanos Energy Center for compliance with the CAA.
4. All correspondence between EPA and other state and federal agencies regarding CAA compliance and enforcement at Los Medanos Energy Center

¹ Note that we have also submitted on this same date a similar request for Delta Energy Center, also located in Pittsburg, California.

5. All correspondence between EPA and Los Medanos Energy Center (or its owner, CalPine Corporation) regarding CAA compliance and enforcement at Los Medanos Energy Center.
6. All monitoring and emission data collected by EPA about Los Medanos Energy Center, and all reports analyzing and/or summarizing that data.

Los Medanos Energy Center's Compliance with the Resource Conservation and Recovery Act

7. All versions of Los Medanos Energy Center's permits, if any, since 2001.
8. A list of all complaints received by EPA since 2001, including unconfirmed complaints, alleging Los Medanos Energy Center as the source.
9. Copies of all notices of non-compliance with RCRA, including Notices to Comply (NTCs), Summaries of Violations (SOVs), and/or Notices of Violations (NOVs) of RCRA issued to Los Medanos Energy Center since 2001.
10. All hazardous waste reports submitted to EPA by Los Medanos Energy Center. Such reports include any reports submitted for the Biennial Hazardous Waste Report required by Sections 3002 and 3004 of RCRA; reporting the hazardous waste, the activity by which the facility generated the wastes, the waste quantity, as well as the management method by which each waste is treated, recycled, or disposed, and the quantity managed.
11. All Inspection Reports documenting inspections of Los Medanos Energy Center for compliance with RCRA.
12. All monitoring information collected by EPA about Los Medanos Energy Center, and all reports analyzing and/or summarizing that information.
13. All documents that list occurrences in which there was an alleged RCRA violation by Los Medanos Energy Center, but for which the facility did not receive a NOV or other notice of non-compliance, including, but not limited to: the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste.
14. All correspondence between EPA and other state and federal agencies regarding RCRA compliance and enforcement at Los Medanos Energy Center
15. All correspondence between EPA and Los Medanos Energy Center (or its owner, CalPine Corporation) regarding RCRA compliance and enforcement at Los Medanos Energy Center

Fee Waiver Request

CARE meets the criteria for a fee waiver under U.S.C. § 552(a)(4)(A)(iii) and EPA's FOIA regulations at 40 C.F.R. § 2.107 because the information requested is in the public interest and CARE will not benefit commercially from this request.

The statutory standard for evaluating a fee waiver request is whether "disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii). EPA regulations at 40 C.F.R. § 2.107 establish the same standard, and set forth factors EPA is to consider in assessing whether a requester is entitled to a waiver

of fees. The factors to be considered by EPA when making a fee waiver determination include: 1) whether the subject of the request concerns “the operations or activities of the government”; 2) whether the disclosure is of informative value “likely to contribute” to an understanding of government operations or activities; 3) whether disclosure will contribute to “public understanding,” meaning the understanding of a reasonably broad audience of interested persons; 4) whether the disclosure is likely to contribute “significantly” to public understanding of government operations or activities, as compared to the level of understanding prior to disclosure; 5) whether the requester has a commercial interest that would be furthered by the disclosure; and 6) whether any commercial interest is sufficiently large, in comparison to the public interest, that disclosure is “primarily in the commercial interest of the requester.” 40 C.F.R. § 2.107(1)(2)-(3).

Here, all factors are met. First, the requested information concerns operations and activities of the government. All documents relate to EPA’s oversight of Los Medanos Energy Center and associated activities such as EPA investigations, inspections, facility review, and oversight. Second, disclosure of these documents will contribute to a public understanding of the government operations that has informative value. With the requested information, the public be able to understand how and when EPA ensures that Los Medanos is in compliance with the CAA and RCRA and what steps it takes to address any non-compliance. Third, this information will enhance public understanding. CARE is a non-profit organization that advocates on behalf of communities such as those proximate to the Los Medanos Energy Center and will ensure that these communities and the public receive the information that CARE receives through this request. Fourth, because the vast majority of this information is not currently available to the public, its disclosure in response to this request will contribute significantly to the public understanding.

Finally, with respect to CARE’s interest, CARE is a non-profit public benefit corporation organized for the purpose of educating the public about, and encouraging public agencies to consider, alternative forms of renewable energy. CARE seeks to use the requested information in furtherance of its mission, and not for any commercial benefit. The only interest served through this request will be the public interest.

In sum, because this request meets all statutory and regulatory factors for a fee waiver request EPA should grant CARE a fee waiver. In the event fees are not waived, please call me and provide an estimate of the fees and/or the opportunity to inspect the records to limit the copying costs. Again, we request and prefer to receive the printouts in *electronic* format.

Finally, in accordance with the requirements of 5 U.S.C. § 552 (6)(A)(i), which states that within twenty days from receipt of the request, the agency is required to notify the person making the request, we request such notification.

Please call me at (415) 442-6549 to let me know when the requested documents will be available. We appreciate your earliest response.

Sincerely,

/s/ Nina C. Robertson
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